IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 694 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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SAJIDBEG ASIFBEG MIRZA
Versus
STATE OF GUJARAT

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Appearance :
MR SHAKEEL A QURESHI for the Petitioner
MR HJ JANI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 17/11/2006

ORAL JUDGMENT

1. Original accused – petitioner herein is before this Court being aggrieved by order passed below Exh.86 in Sessions Case No.212 of 2000 by the learned Sessions

Judge, Surat dated 27.09.2006.

Exh.86 is an application given by the learned Public Prosecutor on 06.03.2006. It is prayed by the said application that the summons be issued on the person – Videographer for a channel who interviewed the present petitioner – accused in the hospital while he was taking treatment for the alleged injuries caused to him by the police.

2. The learned Sessions Judge has discussed this aspect in detail in paragraph Nos.6, 7, 8, 9 and 10 of his order.

3. Mr.Shakeel A.Qureshi, learned advocate for the petitioner submitted that the incident is that of the year 2000 and the application is filed in the year 2006. He submitted that the application is filed at a much belated stage when the Investigation Officer's deposition was in progress. He submitted that the learned Sessions Judge has failed to appreciate the proposition of law laid down by the Hon'ble the Apex Court in the case of **STATE (NCT OF DELHI) VS. NAVJOT SANDHU ALIAS AFSAN GURU**, reported in 2005 Supreme Court Cases (Cri) 1715. The learned advocate for the petitioner read paragraph No.176 of the judgment and submitted that the learned Judge has failed to appreciate the true and correct proposition of

law laid down by the Hon'ble the Apex Court in the said paragraph. For ready perusal, paragraph No.176 is reproduced hereinbelow:

> "We may also refer to the contention advanced by Shri Ram Jethmalani, learned Senior Counsel appearing for S.A.R. Gilani with reference to the confession of Afzal. Shri Jethmalani contended that Afzal in the course of his interview with the TV and other media representatives, a day prior to the recording of a confession before the DCP, while confessing to the crime, absolved Gilani of his complicity in the conspiracy. A cassette (Ext.DW-4/A) was produced as the evidence of his talk. DW-4, a reporter of *Aaj Tak* TV channel was examined. It shows that Afzal was pressurrised to implicate Gilani in the confessional statement, according to the learned counsel. It is further contended by Shri Jethmalani that the statement of Afzal in the course of media interview is relevant and admissible under Section 11 of the Evidence Act. Learned counsel for Afzal, Shri Sushil Kumar did not sail with Shri Jethmalani on this point, realising the implications of admission of the statements of Afzal before the TV and press on his culpability. However, at one stage he did argue that the implication of Gilani in the confessional statement conflicts with the statement made by him to the media and therefore the confession is not true. We are of the view that the talk which Afzal had with the TV and press reporters admittedly in the immediate presence of the police and while he was in police custody, should not be relied upon

irrespective of the fact whether the statement was made to a police officer within the meaning of Section 162 CrPC or not. We are not prepared to attach any weight or credibility to the statements made in the course of such interview prearranged by the police. The police officials in their over-zealousness arranged for a media interview which has evoked serious comments from the counsel about the manner in which publicity was sought to be given thereby. Incidentally, we may mention that PW 60 the DCP, who was supervising the investigation, surprisingly expressed his ignorance about the media interview. We thing that the wrong step taken by the police should not ensure to the benefit or detriment of either the prosecution or the accused."

The learned Sessions Judge in paragraph 8 of his order has observed that:

"Looking to the above mentioned ruling, it appears that, no principle has been laid down by Hon'ble Supreme Court, but, it appears that, Hon'ble Supreme Court has observed that, if a statement is made in the course of an interview prearranged by the police, no weightage can be given to it at the time of appreciation of evidence. It appears that, there is no question of appreciation of evidence, but the only question to be decided is whether the grievance which is sought to be adduced by the prosecution is relevant or not ? and whether the prosecution can be permitted to adduce such evidence or not ?"

4. In the considered opinion of this Court, the learned

Sessions Judge has rightly appreciated the contents of paragraph No.176 of the judgment of the Hon'ble the Apex Court and has rightly discussed the same in paragraph No.8 of his order.

5. In the present case, it transpires from the application – Exh.86 filed by the prosecution that, though the petitioner was technically in police custody, while in hospital, he made himself available to local news channel for interview. In light of these facts, it could not even remotely be said that whatever is stated in the said interview was a statement before the police and is hit by Section 162 of the Criminal Procedure Code. Not only that, as it rightly discussed by the learned Sessions Judge that the contents of that interview may support the defence. It is not the case of the petitioner that the interview was prearranged by the police, besides it is also not the case of the petitioner that the police personnel were present at the time of interview and they forced the petitioner – accused to make narration of the events in a particular manner. In light of that, the contents of that interview must come on record. The learned Sessions Judge has not committed any error in allowing application Exh.86.

6. The learned advocate for the petitioner next relied

upon a decision of this Court in the matter of **TRIKAMBHAI @ TIKO RAVAJIBHAI THAKOR VS. STATE OF GUJARAT**, reported in 2001 (1) GLH 177.

It is a decision of Division Bench of this Court, to which this Court (Ravi R.Tripathi, J.) is party.

7. Learned advocate for the petitioner relied upon Head Note (C) of the judgment which reads as under:

> "Indian Evidence Act, 1872 – Ss. 24 and 25 – Extrajudicial confession by accused while in the police custody before doctor who examined him – Confession recorded by the doctors in the medicolegal certificate – Certificate was exhibited except Portion of extrajudicial confession – When doctor has deposed verbatim such extrajudicial confession, it was held admissible."

Learned advocate for the petitioner submitted that the learned Sessions Judge has failed to appreciate the said judgment in its true perspective.

8. The learned Sessions Judge has discussed this judgment in paragraph No.10 of his order. What is stated by this Court about the appreciation of the earlier judgment by the learned Sessions Judge is applicable to appreciation of this judgment also by the learned Sessions Judge.

9. Mr.H.L.Jani, learned Additional Public Prosecutor submitted that neither before the learned Sessions Judge nor before this Court it is argued or pointed out by the learned advocate for the petitioner that as to how the production of the evidence in question, in the form of video cassette of the interview or the examination of the videographer, who recorded that interview, is going to prejudice. He submitted that in absence of any convincing material to show the production of this evidence is going to cause prejudice to the petitioner, this revision application cannot be entertained. The learned Sessions Judge is right in observing that the contents of that interview might support the defence. Hence, this revision application deserves to be dismissed.

10. Taking into consideration the aforesaid submissions of the learned advocates, this Court is of the opinion that the learned Sessions Judge has not committed any error which warrants interference at the hands of this Court. In the result, the revision application fails and it is dismissed.

(RAVI R.TRIPATHI, J.)

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